IN THE

UNITED STATES

CIRCUIT COURT OF APPEALS

FOR THE

NINTH CIRCUIT.

CHESTER H. KIEHL, as Receiver of The South Bend Water Company,
Plaintiff in Error,

vs.

THE CITY OF SOUTH BEND,
Defendant in Error.

No. 293.

BRIEF OF PLAINTIFF IN ERROR

CHARLES E. SHEPARD,
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THE CALVERT COMPANY, 716 FRONT ST. SEATTLE.

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STATEMENT OF FACTS.

This writ is brought to review the judgment of the court below, in an action by a receiver of a domestic corporation to recover sundry rentals for water supplied to fire hydrants from the water works of the company to the defendant city. A citizen of California brought his suit in equity in the lower court to foreclose mortgages made by the water company on its works; and in the suit applied for a receivership of the company on

the ground of its insolvency, of the excess of the mortgages over the value of the property and of the mortgage interest over its income, and of the necessity of preserving the property and keeping the works in operation. The receiver was appointed, and brought the suit under orders of the court to collect the rentals, payment of which was refused. The necessary jurisdictional facts, and of the creation and orders of the receiver, are alleged in the complaint, and then the claims for rentals are set forth in separate counts month by month (pp. 6–12). The counts being similar, a large part of the complaint is omitted under stipulation. The periods for which rentals are claimed are from July 1, 1893, to May 22, 1894, covering operation by the company; and from May 23, 1894, to October 31, 1894, covering operation by the receiver.

The answer, besides sundry denials which put in issue everything except the corporate character of the defendant and its municipal power of contracting for supply of water, pleaded to the first cause of action, namely, the water rentals for October, 1893, these six defenses (pp. 14–24):

(1) That the city on April 3, 1893, passed an ordinance, No. 118, granting the franchise constituting the pretended contract with the company under which the company had been operating, and that at that time it was indebted beyond one and one-half per cent. of its assessed valuation, and the ordinance not having provided for its submission to popular vote, nor having been submitted thereto or ratified by a three-fifths vote,

and not having provided ways or means to pay the debts under it, it was wholly void.

(2) That the indebtedness of the city for that month's rental was and is in excess of one and one-half per cent., and yet such indebtedness had not been voted by three-fifths of the voters.

(3) That there never was any money in the treasury applicable to the debt.

(4) That the current revenues were so small and were all previously so appropriated that there were no current revenues applicable to pay the rentals.

(5) That the annual revenues, after meeting other necessary liabilities, were insufficient to meet the water rental; and

(6) That the city had issued a warrant for that month's rental.

The same six defenses are pleaded to the rentals for each of the months down to March, 1894, inclusive. For the months of April to November, 1894, both, inclusive, no warrants were issued, and the sixth defense is therefore omitted in the answer as to each count. By stipulation large portions of the answer, being repetitions of the same defenses to each count, are omitted, but the printed record gives all portions necessary for the court's information.

The reply met each of these defenses, as applicable to the successive counts, as follows (pp. 24–30):

(1) A denial that the city was indebted in excess of one and one-half per cent. of its assessed valuation; and an averment that Ordinance No. 118, passed April 3, 1893, was made as a continuation, renewal and modifi-

pealable during the continuance of the franchise, and the proceeds shall be kept as a separate fund to be known as the Water Fund and shall be irrevocable and exclusively devoted to the payment of hydrant rentals," No. 118 provided only that "such rental shall be paid by warrants drawn on the general fund of said city and a sufficient tax shall be levied and collected annually upon all taxable property in said city to meet the payments for hydrants rented as herein provided, which tax shall be irrepealable during the continuance of the franchise hereby granted." The new ordinance was accepted, and the works were completed and future operations were under it (pp. 33, 34, 54, 57–62). The company from July 7, 1893, to May 22, 1894, duly supplied twenty-four hydrants, and its receiver from May 23, 1894, to November 1, 1894, duly supplied the same number (p. 34). Warrants were issued as above stated for rentals from July 7, 1893, to March 31, 1894, inclusive (pp. 35, 76, 77). The city's next valuation was on June 2, 1892, and the general city debt was then within the limit. A $60,000 bond debt had been duly voted in June, 1891, to run for fifteen years, and is still outstanding, and that and the general debt were within the five per cent. limit of the constitution (pp. 35, 37, 75–77). The next assessment was October 16, 1893, and fell so low that the general debt then was in excess of the one and one-half per cent. limit, and the bond debt, apart from the general debt, was in excess of the three and one-half per cent, limit. That state of facts has continued hitherto (pp. 35, 37, 38, 75–78). All the essential facts are

in the findings (pp. 32, 38), and the legal views of the learned district judge are found at pages 38, 39, 46–49. We give other references to the evidence for convenience, but the court can grasp the whole case by simply reading the findings. We waive all exceptions to the findings of fact.

The defendant moved for dismissal for want of jurisdiction, diverse citizenship being lacking, and no federal question involved. The motion was denied, and is renewed by the brief in this court.

The lower court held against the plaintiff as to the counts for which warrants had been drawn, on the ground that, under the law of Washington, the remedy for collection of warrants was not by action but by presentation and demand when they were reached in their order for payment and funds were in hand to pay them, and by *mandamus* upon refusal; and directed a judgment in dismissal and abatement of the action as to those counts. As to the other counts it ruled that the contract between the company and the city reached back to Ordinance No. 100, of August 31, 1891, as contended by the plaintiff, and that No. 118 was only a continuation of it, and that that contract was perfectly legal under the constitution in view of the then state of values and debt, and did not create an indebtedness for the whole amount of rentals to be earned, but only a liability to incur a debt by the supply of water accruing from month to month; but the learned district judge further ruled that when the city, by increase of its debt and shrinkage of its values, passed beyond the constitutional limit it became incapacitated to incur any such

cation of a prior ordinance, No. 100, passed August 31, 1891, in terms nearly identical and of the same legal effect as No. 118, giving a franchise and contracting with the company for a supply of water for fire protection by hydrants, for the same term of thirty years, from fifty hydrants, at the same rental. That the company having been prevented from completing its works within the time limited, the city claimed that the franchise became void, and the company and the mortgagees of its property and franchises claimed that the franchise and contract had not been forfeited and the company was still entitled to supply water and receive rents; and litigation ensued, which was compromised about April 1, 1893, on the terms that the city abandoned its claim of forfeiture, and passed a new ordinance in virtually the same terms except that the number of hydrants was reduced from fifty to twenty-five; and that the city during this time and until after April 3, 1893, was not indebted over its constitutional limit.

(2) A denial that the indebtedness was over the constitutional limit of one and one-half per cent. at the time of incurring each month's rent.

(3) A denial of the third defense above stated.

(4) A denial of the fourth defense above stated.

(5) A denial of the fifth defense above stated; and further that the rental was a current expense of the city, lawfully contracted, which it was bound to pay, irrespective of the amount of its debt before contracted, and that such liability is no part of the debt within the purview of the state constitution prohibiting municipal

debt beyond one and one-half per cent. of the assessed values; and

(6) An admission that warrants were issued for the months above stated.

Upon waiver of a jury trial, sundry evidence was introduced which is found in the printed transcript from pages 51 to 81; but the legal questions which they raise are compressed within a very narrow compass, and a brief summary of the facts will suffice. That summary is as follows:

On August 31, 1891, the defendant, by Ordinance No. 100, granted a franchise and contracted to pay a rental of $7.50 per month per hydrant for fifty hydrants, and such others as should be ordered for thirty years. The franchise was duly accepted (pp. 83, 51–57).

The city's next previous valuation was $2,868,825, and there was then no known debt (pp. 35, 77). The company proceeded with the construction of the water works but did not complete them in time, and litigation having ensued, on April 3, 1893, a new ordinance, No. 118, was agreed on by way of compromise and the suit dismissed. The new ordinance repealed the prior ordinance, but was understood by all concerned to be a substitute for No. 100, and was identical in all material respects except that the number of hydrants was reduced from fifty to twenty-five, and that in place of the provision in No. 100 that the rental was to be paid by the proceeds of a sufficient tax to "be levied and collected annually upon all taxable property in said town subject by law to such tax to meet the payments for hydrants rented, which tax shall be irre-

pealable during the continuance of the franchise, and the proceeds shall be kept as a separate fund to be known as the Water Fund and shall be irrevocable and exclusively devoted to the payment of hydrant rentals," No. 118 provided only that "such rental shall be paid by warrants drawn on the general fund of said city and a sufficient tax shall be levied and collected annually upon all taxable property in said city to meet the payments for hydrants rented as herein provided, which tax shall be irrepealable during the continuance of the franchise hereby granted." The new ordinance was accepted, and the works were completed and future operations were under it (pp. 33, 34, 54, 57–62). The company from July 7, 1893, to May 22, 1894, duly supplied twenty-four hydrants, and its receiver from May 23, 1894, to November 1, 1894, duly supplied the same number (p. 34). Warrants were issued as above stated for rentals from July 7, 1893, to March 31, 1894, inclusive (pp. 35, 76, 77). The city's next valuation was on June 2, 1892, and the general city debt was then within the limit. A $60,000 bond debt had been duly voted in June, 1891, to run for fifteen years, and is still outstanding, and that and the general debt were within the five per cent. limit of the constitution (pp. 35, 37, 75–77). The next assessment was October 16, 1893, and fell so low that the general debt then was in excess of the one and one-half per cent. limit, and the bond debt, apart from the general debt, was in excess of the three and one-half per cent, limit. That state of facts has continued hitherto (pp. 35, 37, 38, 75–78). All the essential facts are

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monthly debt until by a reverse change in the relations of debt and assets the debt again fell within the constitutional limit. The learned district judge's views are clearly expressed in his opinion, at pages 46–49.

ASSIGNMENT OF ERRORS.

Sundry errors are assigned at pages 79–81, to which we beg leave to refer the court. We waive those which pertain to the 11th and 12th findings of fact, and also those which pertain to the ruling that no action could be brought on the warrants and that a judgment in abatement as to those counts should go. We think that the other errors assigned may be all summarized as follows:

(1) The court erred in holding that, "When the increase of the city's debt and the decline of assessed valuation brought the city's general debt (exclusive of the $60,000 bond debt by popular vote) to a point where the constitutional limit of one and one-half per cent. of the assessed valuation was exceeded, the city's power to incur further debt under the contract became suspended, and it did and will so remain till the general debt (exclusive of the $60,000 bond debt) again falls within that limit. The contract is not abrogated or invalidated, but the power to incur or pay a new debt under it is suspended by the higher power of the constitution." And in the conclusions of law, and the order denying the motion for a new trial, and the judgment logically following on that proposition, the court likewise erred.

POINTS AND ARGUMENT.

I.

THE COURT HAS JURISDICTION OF THE ACTION; AND THE MOTION TO DISMISS THE WRIT OF ERROR SHOULD BE DENIED.

It is now well settled that a federal court has jurisdiction of actions and suits by or against receivers appointed by it or by another federal court, in the exercise of its ordinary jurisdiction over litigation between persons of diverse citizenship. Any such action or suit involves a federal question or subject, towit: that of the judicial powers of a federal court in the application of the ordinary rules of law to the rights or liabilities of a receiver deriving his powers from a federal court.

Bock v. Perkins, *139 U. S.*, *629*.
Bachrack v. Norton, *132 U. S.*, *337*.
R. R. Co. v. Cox, *145 U. S.*, *593*.
Tennessee v. Davis, *100 U. S.*, *257*.
School Dist. v. First Nat. Bank, *61 Fed.*, *417*.
Evans v. Dillingham, *43 Fed.*, *177*.
Sowles v. First Nat. Bank, *43 Fed.*, *700*.
Sowles v. Witters, *46 Fed.*, *497*.
S. C., *46 Fed.*, *513*.

The jurisdiction depends on subject, not on citizenship or amount in controversy, and the facts as to these latter, which are conditions of jurisdiction in many cases, are immaterial. The receivership by its nature draws to the jurisdiction of the court all controversies arising from the control and use of the assets of the receivership and the performance of the receiver's duty to reduce its *choses in action* to cash, to operate the corpora-

tion's works and preserve its franchise. The subject matter, then, involves the acts and rights of an officer of a federal court acting under its process. It is, therefore, "a case arising under the laws of the United States."

II.

THE CONTRACT BETWEEN THE CITY AND THE COMPANY WAS VALID WHEN IT WAS MADE; AND IT IMPOSED ON THE CITY AN OBLIGATION CONTINUOUS WHILE THE WATER IS SUPPLIED, ALTHOUGH THE CITY HAS NOW SURPASSED ITS CONSTITUTIONAL LIMIT OF DEBT.

The contract was made August 31, 1891. The first ordinance, No. 100, was then passed, and soon after was duly accepted. The learned district judge held that this was the origin of the contract, and it was to be tested by the facts on that date. In this he was clearly right. It is true that No. 118 repealed No. 100, but the repeal was merely formal, in order to substitute one ordinance for the other. The terms of the two were nearly identical; the grantee, period, franchise, rates to private consumers and to the public were all exactly alike in each. The second in legal effect only modified the first in two particulars: the number of hydrants, and the payment of their rental out of the general fund instead of a special "water fund," and it continued the first as thus modified. This was done as the result of litigation over the timely construction of the plant under No. 100, and in order to diminish the burden on the city. (See pp. 61, 62; also, the two ordinances, pp. 51–61.) It is analogous to legislation which, in form

repealing, in effect continues with modifications, prior legislation.

The contract, then, being made on August 31, 1891, was perfectly valid, because the city had then no debt (p, 77), unless the total rentals to be earned for thirty years were to be counted as present debt. The learned district judge had held to the contrary, and did not decide against us on that ground.

Walla Walla Water Co. v. Walla Walla, 60 Fed., 957, 960–1.

And the current of authority is also quite to the contrary. A contract to pay rent is not a debt of an individual or a city; and while the liability exists always, the debt — the cause of action — comes into being only with the supply of the water or rendition of other service during each month or other period when rent is to become payable.

Wood v. Partridge, 11 Mass., 488, 493.
Dively v. Cedar Falls, 27 Ia., 227.
French v. Burlington, 42 Ia., 614.
People v. Pacheco, 27 Cal., 176, 207.
Smith v. Dedham, 144 Mass., 177.
Cap. Cy. Water Co. v. Montgomery, 9 So., 343–348 (Ala.).
Grant v. Davenport, 36 Ia., 396.
E. St. Louis v. E. St. Louis Co., 96 Ill., 415.
Valparaiso v. Gardner, 97 Ind., 1.
Crowder v. Sullivan, 128 Ind., 486.

The constitution of Washington imposes this restriction on municipal indebtedness: "No city * * shall

for any purpose become indebted in any manner to an amount exceeding one and one-half percentum of the taxable property * * without the assent of three-fifths of the voters."

Const., Art. 8, § 6, 2 Hill's Stats., 835.

This is in terms almost identical with provisions of the constitution of Iowa, adopted in 1857, Illinois, in 1870, and Indiana, in 1881. The two latter States probably copied from Iowa; and Washington having copied from some or all of them with slight verbal changes, their decisions on this subject are very cogent, if not persuasive, in this court.

1 Dillon, Mun. Corp., 4th ed., p. 205, n.
Prince v. Quincy, 105 Ill., 215.
Valparaiso v. Gardner, 97 Ind., 1.
People v. Coleman, 4 Cal., 46.
Sanders v. St. L. & N. O. Anchor Line, 3 L. R. A., 390–1, note; 97 Mo., 26.

Now, there are two conditions to the validity of municipal contracts for stated periodical payments running through a long time, under such constitutional or statutory limitations:

(1) At the date of the contract, the city must not be indebted beyond the limit.

(2) Provision must be made in the general law, or in the city's charter, or in the contract itself, for a sufficient tax to meet the periodical payments.

We have seen that the city's debt then did not forbid this contract. The second condition is satisfied by the terms of the ordinance. It provides (§ 10) that (*a*) the

"rental shall be paid monthly for the number of hydrants in good order during the preceding month;" (*b*) "said rental shall be paid by warrants drawn on the general fund of said city;" (*c*) "and a sufficient tax shall be levied and collected annually upon all taxable property in said city to meet the payments for hydrants rented, as herein provided;" (*d*) "which tax shall be irrepealable during the continuance of the franchise herein granted." Ample provision for payment out of current yearly revenue is thus made; and the total annual rentals would in no year exceed the total tax assessable under the limit of six mills for general purposes. It is true that Ordinance No. 100 provided for a special tax and a "water fund," and in that respect we have modified our contract to our detriment. Nevertheless, the contract as modified contains sufficient and specific provisions for funds for that purpose, and meets the second condition above stated. And it is a matter of doubt whether the first ordinance legally created a "water fund." South Bend was then a city of the third class.

1 Hill's Stats., § *504.*

And it had power "to contract indebtedness for general municipal purposes," and among such purposes "to contract for supplying the town with water for municipal purposes."

1 Hill's Stats., §§ *702, and 636, sub. 3.*

But councils of cities of the third class can create but four funds: general, street, and sewer funds, and in certain cases river and water front improvement fund.

1 Hill's Stats., §§ 636, sub 9, and 648.

It would therefore seem that such expenses as rents of buildings and hydrants, salaries, etc., must be paid out of the general fund, and no special fund can be created. But however that may be, the provisions of Ordinance No. 118 are ample in law to secure our rights.

Now, the distinction which can be traced through all the cases, and which reconciles all, is that one or the other of these conditions (~~existing~~ no excess of debt, and ~~lack of~~ provision to pay) is absent from all cases which rule against municipal contracts of this character; while both elements are present in every or nearly every decision sustaining such a contract.

Grant v. Davenport, 36 Ia., 396, was the first (1873), and is the leading case on this subject. It was an action to restrain the city from carrying into effect an ordinance for lighting its streets, on the ground urged here: that the money to be paid for the contracted period exceeded the city's limit of debt. The contract was held valid. It has been followed by many other decisions, from which we select and cite these:

Burlington Water Co. v. Woodward, 49 Ia., 58;
E. St. Louis v. E. St. L. Gas Light Co., 98 Ill., 415,

where precisely the same defense as here was made, viz., that the city *after* the contract was made ran into debt over its limit. The court held that the contract was valid, because the annual charge did not exceed the annual income, and said: "If we hold that the contract

* * is a debt within the prohibition in the constitution we should lay down a principle that would in a great majority of instances put an end to municipal government." (Page 419.)

Valparaiso v. Gardner, 97 Ind., 1,

which held a long-time water contract good, and said: "If municipal corporations cannot contract for a long period of time for such things as light or water, the result would be disasterous."

Crowder v. Sullvian, 128 Ind., 486.
Carlyle W. L. & P. Co., v. Carlyle, 31 Ill. App., 339.
Carlyle v. Carlyle W. L. & P. Co., 140 Ill., 445.
Utica Water Works Co. v. Utica, 31 Hun., 430.
Weston v. Syracuse, 17 N. Y. 110.
State v. McCauley, 15 Cal., 429.
Koppicus v. State Cap. Comrs., 16 Cal., 248.
Budd v. Budd, 59 Fed., 735.
Walla Walla Water Co. v. Walla Walla, 60 Fed., 957.
Saleno v. Neosho, § 27 L. R. A., 769 (Mo.).

Precisely this distinction which we make here, that the contract is valid if the city at its date is within its limit of debt, and *vice versa*, is made in the case last cited, and in the next wherein a time contract for water and light was held void.

Beard v. Hopkinsville, 23 L. R. S., 402 (Ky).

This distinction severs the authorities sharply into two classes, and upon analysis will be found to be the

ratio decidendi in nearly all which seem to be against us. By applying this distinction they are found not to be adverse, because of the difference in the facts as to debt and provision for payment. This is very evident upon examination of all the leading cases cited for the defense.

Sackett v. New Albany, *88 Ind.*, *473*.
Springfild v. Edwards, *84 Ill.*, *626*.
Law v. People, *87 Ill.*, *385*.
Fuller v. Chicago, *89 Ill.*, *282*.
Prince v. Quincy, *105 Ill.*, *138 and 215*.
S. C., *128 Ill.*, *443*.
Davenport v. Kleinschmidt, *6 Mont.*, *502*.
Coulson v. Portland, *I Deady*, *414*.

In this last case, the debt was for a railroad subsidy, and was an absolute present debt for the whole amount, although payable *in futuro*.

Murphy v. E. Portland, *42 Fed.*, *308*.
Barnard v. Knox County, *37 Fed.*, *563*.

All of these cases and of the others cited in the brief for the defendant in error contain one and some both of the two elements above stated, on which the question depends. But where the sum to be paid each year does not exceed the income of that year, a prohibition against contracting debts which cannot be paid out of the revenue of the same fiscal year is not void. In other words, it is not a debt till each installment for services rendered falls due.

Merrill Ry. & L. Co. v. Merrill, *80 Wis.*, *358*.

The distinction which we insist is conclusive of our right of recovery here is indeed the vital element in all instances of municipal debt in relation to limit and to current provision for current outlay. For, so long as the city is within the limit, it may for municipal purposes contract for services or supplies and incur liabilities thereby running over a long period — just as a prudent householder or manufacturer, in good credit and with an assured income, may. This is only sound finance. But when disaster or imprudence has cut down to the roots his resources and blasted his credit, he finds it impossible to make such contracts any longer, just because the settled laws of finance debar him of the necessary credit. He must henceforth and until a change in the tide "pay as he goes." So with the city. When its limit is once overshot, the municipal law puts a ban on its credit. It cannot make any new contracts, for a month or a decade. It must go on and "do business" within prudent and possible limits; it must keep its house in order, and perform its functions. But it must do it on a cash basis. The constitution puts on its credit the same check which the maxims of finance and the self-interest of lenders and sellers puts on a merchant's, when things have got to that pass. There is nothing to do but to pay cash for current expenses. This is the plain object of the limitation — to compel the city to make no new debts, but to pay its "living expenses" out of current income.

State v. Atlantic City, 9 *Atl.*, 759, 765 (*N. J.*).

And it is its duty to retain and apply current rev-

enues to payment of current expenses, *i. e.*, not to pay out the whole of its income upon its previous issue of warrants, but to pay out of that income enough on current expenses to avoid creation of new debt for current expenses.

Shaw v. Statler, *74 Cal.*, *258.*
Schwarts v. Wilson, auditor, *75 Cal.*, *502.*
Davenport G. L. Co. v. Davenport, *13 Ia.*, *524.*
Coffman v. Davenport, *26 Ia.*, *515.*

Here, again, it is like the individual debtor. While good credit lasts, new notes can be put out, and the old ones paid in order of issue. When credit lapses, current expenses must be paid in cash, and only the surplus, if any, be applied to old debts. So only can he continue to live and do business, and progress in rehabilitating his credit. Thus, also, with the city. It must continue to live, *i. e.*, to perform its municipal functions of police and government. It is repudiation to say that it will not pay for water or light, contracted for five years previously, on the faith of which contracting, expensive works have been built. Such and like expenses must be incurred, as with a family, while life lasts. Provision for their supply can be made only through reliance on a long-time contract, justifying large outlay at the start. Provision for the payment of the monthly bills must be made out of the annual income. And such provision is made by the contract in this case. With supply and payment thus correlated, no new debt is incurred, and if the city does its legal and moral duty it pays as it goes. Such contracts

create charges on its future income, and they at least must be met, and other expenses, not subjects of fixed and long contracts, must be cut down. In no other way is it possible for any city to obtain credit for any transaction to run through, or to be paid for through, a long period. The learned district judge's decision that though the contract was valid, the power to incur debt and to pay for water under it was suspended, is simply an invitation to any city to run its debt up to the limit as a means of annulling a contract which, through change of politics or prices, the powers that be want to be rid of. And the principle has broader applications. A present loan is a debt, but all the interest to accrue through thirty years, while the bonds run, is not a debt till it accrues, each half year. If a city legally borrows $1,000,000 today, but next year is beyond its limit, why may it not then say: "We have had the use of your money for the past six months, and for that service, by the terms of our contract, an indebtedness of $25,000 to you would accrue today. Our contract was and is legal; but unfortunately we have now run so deeply in debt that we are incapacitated from performing this contract, while this excess of indebtedness continues. If we can reduce our debt within our limit we will then resume payment of interest to you and anyway will pay you the principal in 1925, but this interest, being a debt accrued while we were over the limit, and any other interest in like circumstances we cannot pay — the alleged debt is a nullity."

It is like the three little maids in The Mikado: "If it were not for the law!" And the law is such a terror

when it says you mustn't do what you're aching not to do.

We have been unable to find any authority directly bearing on the ground of the lower court's decision against us, viz., that while the contract was valid, the power to act under it and perform it on the city's part was suspended while the city was over the limit — fluctuating perhaps, like a pendulum, on each side of the line. That it would be impossible under this ruling to conduct with a city financial operations of magnitude, involving capital, credit, the slow results of steady payments over long periods, and sure reliance on good faith and prompt payments is plain at a glance. That this ruling also opens an unintended door to repudiation by tempting dishonest officials to increase the city's debt till they brought it within the terms of the ruling is also unfortunately true. If this is the law, any such contract with the city can be cut up by the roots. And that means the destruction of municipal credit.

As we have already conceded, the plaintiff in error mistook his remedy as to the rentals for which warrants were issued; and as to them the judgment should be affirmed. As to the others, we are entitled, if the foregoing views are approved by this court to a reversal of the judgment below, with directions to enter a judgment for the plaintiff.

CHARLES E. SHEPARD,
Attorney of Plaintiff in Error.